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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/2007

SPONSOR Foley LAST UPDATED _____ HB 790

SHORT TITLE Create Crimes of Smuggling of Persons SB _____

ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 736

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public defender Department (PDD)
 New Mexico Corrections Department (CD)
 Department of Public Safety (DPS)
 Bernalillo County Metro Court (BCMC)

SUMMARY

Synopsis of Bill

House Bill 790 adds to the state's Criminal Code, Chapter 30 (NMSA 1978), the crime of smuggling of persons and establishes penalties including seizure and forfeiture of a motor vehicle used in smuggling.

FISCAL IMPLICATIONS

DPS reports that there would initially be a minimal impact to the Department of Public Safety daily operations. Once officers have advanced training and become more accustomed to identifying this crime, it could have a more substantial effect on our operation but nothing that could not be handled with current resources.

According to CD, the addition of new felony offenses could increase the department's costs by the minimal addition to the inmate population and probation/ parole caseloads.

SIGNIFICANT ISSUES

Section 1: Adds the new crime of smuggling of persons, when a person for pecuniary benefit knowingly:

- transports another person in a manner that conceals the person from law enforcement and creates a substantial likelihood that the individual will suffer great bodily harm or death; or
- procures transportation for another person that is designed to conceal the person from law enforcement and creates a substantial likelihood that the individual will suffer great bodily harm or death.

Penalties:

- For smuggling not resulting in injury – third degree felony
Exceptions:
 - 1) Smuggling of a child age 13-18 – second degree felony
 - 2) Smuggling of child under age 13 – first degree felony
- For smuggling resulting in injury – second degree felony
Exception: Smuggling a child under age 18 – first degree felony
- For smuggling that results in great bodily harm or death – first degree felony

HB 790 requires enhanced penalty of 3 additional years for a person convicted of smuggling 10 or more persons.

Section 2: Requires motor vehicles to be subject to seizure and forfeiture when used or intended for use in smuggling persons, and applying the State Forfeiture Act (Section 31-27-1, NMSA 1978) to seizure, forfeiture and disposal of such motor vehicle.

AGO has listed the following issues in their analysis:

According to federal law, the smuggling of persons involves the illegal transport of persons across international borders.

The enforcement of smuggling persons is viewed as an area of federal immigration law. The state enforcement of smuggling persons as written in HB 790 would conflict with existing federal law.

ADMINISTRATIVE IMPLICATIONS

DPS notes that often the suspects in this type of crime would not be American citizens, this would increase the necessity of interaction with other Nation's Consulates by the Department of Public Safety or other investigating agencies.

PERFORMANCE IMPLICATIONS

AGO notes that state law enforcement will require extensive training with federal government and additional resources.

DUPLICATION, RELATIONSHIP

Duplicates SB 736; Relates to SB 778

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DPS states that the smuggling industry will continue to operate without fear of prosecution at the state level. State and local enforcement will continue to rely on federal agencies for prosecution.

BS/mt